

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0786**

State of Minnesota,  
Appellant,

vs.

Nicolee Marie Holmgren,  
Respondent.

**Filed April 24, 2023  
Affirmed  
Wheelock, Judge**

Mower County District Court  
File No. 50-CR-21-1657

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Heather Kjos Schmit, Assistant County Attorney, Austin, Minnesota (for appellant)

Drake D. Metzger, Metzger Law Firm, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK, Judge**

The state appealed from the district court's order granting respondent's motion for judgment of acquittal, arguing that the district court erred because the evidence was sufficient to support the jury's guilty verdict for domestic assault. Because the

circumstances proved at trial are consistent with a rational hypothesis of innocence, we affirm.

## **FACTS**

Appellant State of Minnesota charged respondent Nicolee Marie Holmgren with one count of misdemeanor domestic assault with intent to cause fear, in violation of Minn. Stat. § 609.2242, subd. 1(1) (2020). The district court held a jury trial in March 2022, at which the following facts were established.

Holmgren, an adult, lived with her parents, L.H. and T.H., in Red Rock Township. On the morning of September 1, 2021, L.H. was getting ready to go to a doctor's appointment. He had been hospitalized two days prior because his atrial fibrillation caused his heart to beat uncontrollably fast, especially when he was agitated.

L.H. encountered Holmgren as he was coming down the stairs to the main floor. L.H. testified that he and Holmgren had argued the night before, and that morning, Holmgren "just blew up" at him, calling L.H. names and becoming "really frustrated, really angry, red in the face." Holmgren stood in front of L.H. on the stairs and did not let him by when he asked to pass by her.

L.H. was eventually able to pass by Holmgren and went to the basement. Holmgren followed "right behind" him and continued to scream at him. L.H. testified that Holmgren "physically postured" at him and yelled so hard that "spit was coming out of her mouth."

Both T.H. and L.H. testified that they carried pepper spray with them and kept pepper spray in their bedroom because they did not feel safe with Holmgren living in their home due to her mental-health issues, hostility, and frustration. L.H. pulled out his pepper

spray when he got to the bottom of the basement stairs and told Holmgren he would use it if she touched him. L.H. testified that Holmgren stopped yelling and stood at the bottom of the basement stairs when he showed her the pepper spray.

After retrieving clothes from the basement, L.H. began to climb the basement stairs, but Holmgren stood in his way again and would not let him pass her. L.H. asked to pass by Holmgren, and she moved to the top of the basement stairs. L.H. testified that he had to hang on to the stair rail because his heart “was going fast.” He then stated to Holmgren, “Nic, you gotta stop this. You’re gonna kill me.”

At this point, T.H. came out of the bedroom and downstairs to the main floor and informed L.H. and Holmgren that she had called law enforcement. T.H. handed the phone to L.H.; he exited the house and sat in his truck while speaking to the dispatcher. L.H. testified that the entire encounter with Holmgren lasted between two to five minutes.

T.H. testified that she woke up on the morning of September 1 to the sound of Holmgren “yelling and screaming” at L.H. T.H. further testified that her first thought was for L.H.’s health because he had just been in the hospital for atrial fibrillation. T.H. stated that Holmgren “just kept escalating and escalating her . . . yelling and screaming,” and T.H. “didn’t know what else to do” and “didn’t know what was happening,” so T.H. called law enforcement.

The responding deputy who arrived first on the scene in response to T.H.’s report testified that he interviewed L.H. and T.H. in the driveway and then entered the house and spoke to Holmgren. During the interview, the deputy and L.H. discussed how L.H. and T.H. were afraid for their safety, there was a possibility that Holmgren was not taking her

medication, and L.H. and T.H. wanted Holmgren out of the house. The deputy informed L.H. that “the only way we’re gonna get [Holmgren] out is through a domestic with a DANCO.” The deputy testified that after interviewing her, he arrested Holmgren for domestic assault with intent to cause fear.

Holmgren testified on her own behalf. She testified that L.H. had directed “explosive angry outbursts” at her in the past and that she was “tearful” on the morning of September 1 because L.H. had recently yelled at her. She became upset because L.H. “shut [her] down” when she tried to speak to him about it. Holmgren admitted that she raised her voice during the ensuing argument. She testified that she did not intend to block L.H. from moving and explained that she may have inadvertently been in L.H.’s way when standing in the basement doorway because she and L.H. are “on the larger side of people.” She further testified that she did not intend to cause L.H. fear.

At the conclusion of trial, the jury returned a guilty verdict for the single count of domestic assault with intent to cause fear. Holmgren moved for judgment of acquittal, arguing that the state presented insufficient evidence of Holmgren’s intent to cause fear in L.H. The district court held a hearing on Holmgren’s motion, then filed an order granting the motion. The district court determined that the evidence was insufficient to support a conviction because the circumstances proved were consistent with a reasonable hypothesis other than guilt—Holmgren did not intend to cause L.H. fear of bodily harm.

The state appeals.

## DECISION

Holmgren's motion for judgment of acquittal asserted that the state presented insufficient evidence to prove beyond a reasonable doubt that she intended to cause L.H. to fear immediate bodily harm or death. In deciding Holmgren's motion, the district court correctly applied the same standard appellate courts use to review the sufficiency of circumstantial evidence. *See State v. Sam*, 859 N.W.2d 825, 831 (Minn. App. 2015) (first citing *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010); and then citing *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013)) (stating that the district court is required to apply the *Al-Naseer/Silvernail* analysis to decide a motion for judgment of acquittal in a circumstantial-evidence case). This court reviews de novo the district court's decision on a motion for judgment of acquittal. *State v. DeLaCruz*, 884 N.W.2d 878, 890 (Minn. App. 2016).

When reviewing a sufficiency-of-the-evidence claim, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts review a conviction with "heightened scrutiny," however, when the conviction is based on circumstantial evidence. *Al-Naseer*, 788 N.W.2d at 473. Circumstantial evidence is evidence that requires a fact-finder to "infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence differs from direct evidence in that it "always requires an inferential step to prove a fact." *Id.*

The jury found Holmgren guilty of domestic assault with intent to cause fear, as prohibited by Minn. Stat. § 609.2242, subd. 1(1). Domestic assault with intent to cause fear is a specific-intent crime; it requires the actor to intend, through their actions, to cause the victim to fear immediate bodily harm or death, although the crime does not require actual harm. *State v. Fleck*, 810 N.W.2d 303, 308-09 (Minn. 2012). Evidence of intent is typically circumstantial because “[i]ntent is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted); *see also State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (noting that the jury draws an inference of intent “from the totality of the circumstances” (quotations omitted)).

When a conviction is based on circumstantial evidence, appellate courts apply a two-step standard of review. *Silvernail*, 831 N.W.2d at 598. First, the reviewing court identifies the circumstances proved at trial. *Id.* In doing so, it defers to the fact-finder’s “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). In other words, it reviews conflicting evidence in the light most favorable to the verdict. *See id.* at 330; *State v. Tschau*, 758 N.W.2d 849, 858 (Minn. 2008).

Second, appellate courts “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). At this step of the analysis, appellate courts “give no deference to the fact finder’s choice between reasonable inferences.” *Id.*

(quotation omitted). The court considers the circumstantial evidence “as a whole” when completing this step of the analysis. *Id.*; *see also Andersen*, 784 N.W.2d at 332 (“[W]e do not review each circumstance proved in isolation. Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” (quotation omitted)).

To assess the sufficiency of the evidence in this case, we first determine the circumstances proved at trial. And we defer to the jury’s credibility determinations and view the evidence in the light most favorable to the verdict. *See Andersen*, 784 N.W.2d at 329; *Tscheu*, 758 N.W.2d at 858. Thus, we assume that the jury credited L.H.’s testimony.

The following circumstances were proved at trial:

- Holmgren and L.H. had an argument the night before the incident, and Holmgren confronted L.H. the following morning.
- Holmgren repeatedly yelled and blocked L.H.’s way on the stairs to the main floor, then followed him while yelling as L.H. walked down the basement stairs.
- L.H. asked Holmgren to move out of his way and to stop arguing with him multiple times.
- Holmgren “physically postured” at L.H. and yelled so forcefully that spit came out of her mouth.
- L.H. felt fearful and pulled out his pepper spray to prevent Holmgren from touching him.
- Holmgren stopped yelling when L.H. pulled out the pepper spray, and she moved to the top of the basement stairs.

- L.H. had trouble climbing the basement stairs due to his rapid heartbeat and said to Holmgren, “Nic, you gotta stop this. You’re gonna kill me.”
- As L.H. was making that statement, T.H. approached L.H. and Holmgren with her phone in hand and informed both of them that she had called law enforcement.
- L.H. exited the house and waited in his truck for law enforcement to arrive.
- According to L.H., the entire encounter with Holmgren lasted about two to five minutes.

The second step of the analysis is to determine whether the circumstances proved are consistent with guilt and inconsistent with a reasonable alternative hypothesis of innocence. Here, the state argues that the evidence was sufficient to convict Holmgren because the circumstances proved supported a reasonable hypothesis that Holmgren intended to cause L.H. fear and did not support any reasonable hypothesis of innocence. The state points to the evidence presented at trial to support its contention that this encounter was “more hostile” and “more aggressive” than previous arguments between Holmgren and L.H. The state emphasizes that Holmgren continued to scream and block L.H.’s path despite L.H.’s multiple requests for her to stop, including his statement, “Nic, you gotta stop this. You’re gonna kill me.” While we agree that the circumstances proved supported a reasonable hypothesis that Holmgren intended to cause L.H. fear, we disagree that the circumstances proved do not support a reasonable alternative hypothesis of innocence.

First, we note that cases in which intent to cause fear is proved typically include evidence of the defendant’s use of a verbal threat, weapon, or physical contact. *See, e.g.,*



*State v. Kastner*, 429 N.W.2d 274, 275 (Minn. App. 1988) (concluding that defendant’s intent to cause victim fear of immediate bodily harm could be reasonably inferred from defendant’s threatening statements and brandishing of scissors and screwdriver), *rev. denied* (Minn. Nov. 16, 1988); *State v. Nelson*, No. A14-0810, 2015 WL 853492, at \*3-4 (Minn. App. Mar. 2, 2015) (concluding that evidence supported reasonable inference of intent to cause fear because defendant grabbed and pushed victim), *rev. denied* (Minn. May 19, 2015).<sup>1</sup> There is no evidence in the record that Holmgren verbally threatened L.H. or touched him in any way. The only behavior Holmgren displayed was yelling and “physically posturing” at L.H., and the record does not indicate what words Holmgren yelled or what type of movements Holmgren made that constituted physical posturing.

L.H.’s testimony established that Holmgren was “prone to having abrupt and hostile arguments,” and the argument that day “was escalating to the point where it just couldn’t continue.” L.H. also testified that he feared for his safety. However, a reasonable inference can be drawn from this testimony that this incident involved an argument that was worse than previous arguments, but Holmgren did not intend to cause fear in L.H. L.H.’s subjective fear is not inconsistent with the reasonable hypothesis that Holmgren did not intend to cause him to fear immediate bodily harm or death. There is no indication in the trial evidence that Holmgren was aware of how fearful L.H. was before L.H. pulled out his pepper spray, and at that point, Holmgren stopped yelling and moved up the basement stairs when L.H. asked her to move out of his way. L.H. did not inform Holmgren that his

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<sup>1</sup> We recognize that nonprecedential opinions may be cited only as persuasive authority. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

heartbeat had increased or indicate that the argument was affecting him until *after* Holmgren stopped yelling, when L.H. walked to the top of the stairs and stated, “Nic, you gotta stop this. You’re gonna kill me.”

The state cites *State v. Meyer* to argue that the evidence in this case excludes a rational hypothesis of innocence. No. A17-0205, 2018 WL 492623 (Minn. App. Jan. 22, 2018), *rev. denied* (Minn. Apr. 17, 2018).<sup>2</sup> In *Meyer*, this court concluded that Meyer intended to cause fear of bodily harm when Meyer knew that the victim had recently had surgery on her stomach and pushed a plate against the victim’s stomach during an argument. *Id.* at \*5. However, the instant case can be distinguished from *Meyer* because there was no evidence presented at trial that Holmgren intentionally exacerbated L.H.’s atrial fibrillation in an attempt to harm L.H. or cause L.H. to fear bodily harm.

The state further argues in its reply brief that “the jury rightly established that [Holmgren] had the purpose to do the thing or cause the result specified . . . in other words, the jury found [Holmgren] had the requisite intent,” and it contends that this court should defer to the jury’s determination here. The state is correct that this court must defer to the jury’s “rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Andersen*, 784 N.W.2d at 329 (quotation omitted). However, this court is not

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<sup>2</sup> In the following discussion, we note that the state cites three nonprecedential opinions to support its argument: *Meyer*, 2018 WL 492623; *State v. Caruthers*, No. A16-0587, 2017 WL 164417 (Minn. App. Jan. 17, 2017); *State v. Clancy*, No. C9-01-710, 2002 WL 233913 (Minn. App. Feb. 19, 2002), *rev. denied* (Minn. May 14, 2002). Nonprecedential opinions may be cited only as persuasive authority. *See Dynamic Air, Inc.*, 502 N.W.2d at 800. However, we are not persuaded by these cases because they are factually inapposite to the instant case.

required to defer to the jury's choice between reasonable inferences drawn from the evidence, see *Silvernail*, 831 N.W.2d at 599, and Holmgren's intent to cause L.H. fear is only one reasonable inference that can be drawn from the evidence here.

The state also argues in its reply brief that the district court ignored the circumstance proved that Holmgren "physically postured" toward L.H. It cites *Clancy*, an obstruction-of-legal-process case, for the proposition that "angry words" combined with "physical postures and movements" satisfy the element of force. Therefore, the state argues, the term "physical posturing" is "well understood in the context of an assaultive encounter" to mean that Holmgren displayed aggressive behavior "intending to impress threats upon the recipient." The instant case can be distinguished from *Clancy* because the record in that case indicated that Clancy "clenched and raised his fists" in addition to stating, "You're mine," and advancing toward the complainant while shouting obscenities. *Clancy*, 2002 WL 233913, at \*4. Here, the evidence did not establish with specificity what Holmgren was shouting or what movements she made to "physically posture" toward L.H. Therefore, the circumstance proved that Holmgren "physically postured" toward L.H. does not preclude a reasonable hypothesis that Holmgren did not intend for her actions to cause fear in L.H.<sup>3</sup>

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<sup>3</sup> Holmgren submitted a pro se supplemental brief that further explained her view of the encounter with L.H. In the supplemental brief, Holmgren refers to facts outside the record and does not cite any legal authority. As such, Holmgren does not raise any issue in her pro se supplemental brief that merits relief. See *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006) (stating that an allegation is considered waived if it is outside the record and an issue is waived if the brief does not develop an argument or contain legal authority), *rev. denied* (Minn. Jan. 24, 2007).

The state finally argues that physical contact or use of a weapon is not necessary to prove intent to cause fear. It argues that the evidence was sufficient to show that Holmgren intended to cause harm in the form of “cardiac arrest or other physical ailment due to L.H.’s severe atrial fibrillation.” The state analogizes the instant case to *Caruthers*. In *Caruthers*, this court concluded that the defendant intended to cause fear without the use of physical force or a weapon via verbal threats that included yelling profanity and the phrase, “Let’s go outside,” to the complainant in addition to previously threatening to “kick [the complainant’s] a--.” 2017 WL 164417, at \*3. This analogy is inaccurate, however, because the instant case does not involve similar threatening language. Rather, the record here does not reflect any verbal threat Holmgren made to L.H. that would indicate her intent to cause L.H. fear of immediate bodily harm or death.

Although the circumstances proved are consistent with the jury’s determination that the state established the intent element by circumstantial evidence, the circumstances proved are also consistent with a reasonable hypothesis of innocence—that Holmgren engaged in an argument with L.H., as was a common occurrence in the household, but did not intend to cause L.H. fear of immediate bodily harm or death. Thus, we conclude that the evidence was insufficient to support the guilty verdict against Holmgren because the circumstances proved supported a reasonable hypothesis of innocence.

**Affirmed.**